IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.341 OF 2007

Urja Developers & Beautification Pvt. Ltd. ...Appellant

Versus

Maharashtra State Road Development Corporation Ltd. ...Respondent

Shri Dhakephalkar, Sr Advocate with Shri Harshad Bhadbhade for the Appellant.
Shri C.J.Sawant, Sr Advocate with Shri Vinay Bhate for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 13, 2007.

P.C.:

1. The submissions of the learned senior counsel appearing for the contesting parties were heard yesterday. Today the Appeal From Order is kept for dictation of order.

2. The learned senior counsel appearing for the Appellants on instruction of the Appellants submits that as there is a formal defect in the suit filed by the Appellant, the same may fail. He, therefore, seeks permission to withdraw the suit with liberty to institute a fresh suit in respect of subject matter of the present suit. He states that to enable the Appellant to do so, ad-interim relief which was

operating till today may be continued for a reasonable time.

3. The learned senior counsel appearing for the Respondent opposed the prayer by pointing out that the Respondent will suffer huge monitory loss if such a prayer is acceded to.

4. The Appellant now wants to file a substantive suit for specific performance of the alleged agreement executed by the Respondent. According to the case of the Appellant, the Respondent has committed breach of the alleged agreement. Considering the facts and circumstances of the case, the prayer made by the Appellant deserves to be granted. The learned senior counsel appearing for the Appellants states that advance notice of the proceedings taken out by the Appellant will be given to the Respondent.

5. Hence, the Appeal From Order is disposed of by passing following order:

(i) The Appellant Company is permitted to withdraw S.C.Suit No.276 of 2007 with liberty to file a

fresh suit in the subject matter of the said suit.

(ii) To enable the Appellant to do so and to apply for appropriate interim relief in the fresh suit, the order passed by this Court on 27th February, 2007 in Appeal From Order No.141 of 2007 will continue to operate for a period of three weeks from today.

(iii) The trial Court will pass a formal order on the suit on production of an authenticated copy of this order.

(iv) Appeal is accordingly disposed of.

JUDGE